



The 48E Safe Harbor for Solar and Wind Just Got Deeper

On June 6, 2026, the U.S. District Court for the District of Columbia, in [Oregon Environmental Council v. IRS](#), vacated (and sent back) the Trump administration's attempt to limit the "safe harbor" for large solar and wind projects that want to claim the 48E tax credit.

To claim the credit, projects either need to begin construction by July 4, 2026, or complete construction by December 31, 2027. Since at least 2013, taxpayers could meet the IRS's safe harbor for "beginning construction" by either starting physical work or paying or incurring "five percent of the total cost of the facility." In 2025, the IRS attempted to limit the safe harbor by issuing Notice 2025-42, which limited the "beginning of construction" safe harbor – for just large solar and wind projects – to the physical work test. Numerous interested parties filed suit and have won at the district court level, reinstating the 5% safe harbor.

This is a significant victory for the industry as it provides an extra layer of certainty for those who want to claim the credit. The IRS typically cannot unilaterally increase a taxpayer's tax burden absent congressional action. Notice 2025-42 was clearly an attempt by the IRS to dissuade taxpayers from claiming a rightful deduction. Courts, not IRS notices, are the ultimate arbiters of tax deductions. The District Court's opinion is well-reasoned and provides ample certainty to anyone who meets the 5% rule, even if the IRS appeals or attempts to limit the deduction in the future.

Those who want to mitigate their risk from escalating energy costs need to act quickly. Even with the 5% rule in place, the July 4 safe harbor deadline is just around the corner.

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